

December 12, 2003

**VIA HAND DELIVERY**

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

RECEIVED

DEC 12 2003

PUBLIC SERVICE  
COMMISSION

2003-00073

RE: AT&T Broadband Phone of Kentucky, LLC v. ALLTEL Kentucky,  
Inc. and Kentucky ALLTEL, Inc.

Dear Mr. Dorman:

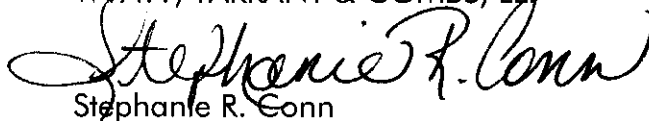
Enclosed for filing please find an original and eleven (11) copies of the Petition for Confidential Treatment of ALLTEL's Post Hearing Brief. A redacted copy of the Post Hearing Brief is attached to ALLTEL's Petition for Confidential Treatment. An unredacted copy is being filed under seal in the enclosed envelope.

Please return a date-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to call.

Sincerely,

WYATT, TARRANT & COMBS, LLP

  
Stephanie R. Conn  
Legal Secretary to James H. Newberry, Jr.

Enclosures

Petition and Redacted Post Hearing Brief (original and 11 copies)  
SASE

cc: Parties of Record  
30313755.1

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DEC 12 2003

CLERK OF COURT  
COMMONWEALTH OF KENTUCKY

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**AT&T BROADBAND PHONE OF  
KENTUCKY, LLC  
COMPLAINANT**

**VS**

**ALLTEL KENTUCKY, INC. AND  
KENTUCKY ALLTEL, INC.  
RESPONDENTS**

**CASE NO. 2003-00023**

**PETITION FOR CONFIDENTIAL TREATMENT OF  
ALLTEL POST HEARING BRIEF**

ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") moves the Kentucky Public Service Commission ("Commission") pursuant to K.R.S. §61.878(1)(c)(1) and 807 KAR 5:001, Section 7 to accord confidential treatment to the information discussed in ALLTEL Kentucky's Post Hearing Brief ("Brief") with respect to facility arrangements between AT&T Broadband Phone of Kentucky, LLC ("Complainant") and Insight Communications ("Insight") (collectively the arrangements may be referred to herein as, "Complainant's Facilities Arrangements"), and in support thereof states the following:

1. The Commission conducted a final hearing in this matter on June 12, 2003, wherein Complainant was ordered to provide to ALLTEL Kentucky's counsel (pursuant to a protective agreement) the agreements describing Complainant's Facilities Arrangements.

2. In order to adequately address its position with respect to the fact that AT&T Broadband has entered into, and has adequate rights under, certain arrangements with Insight, ALLTEL Kentucky prepared the Brief which cites to and otherwise describes certain information with respect to Complainant's Facilities Arrangements.

3. Complainant's Facilities Arrangements includes proprietary network information revealed to ALLTEL Kentucky only on a proprietary basis.

4. Complainant's Facilities Arrangements are treated as highly confidential by ALLTEL Kentucky and its affiliates. Complainant's Facilities Arrangements contain information that is disclosed internally within ALLTEL on a need-to-know basis only to certain individuals who are directly responsible for preparing ALLTEL Kentucky's defense in this matter and who executed a protective agreement with Complainant. Further said information is disclosed to the Commission only when required and only pursuant to a confidentiality agreement or enforceable order according the information confidential treatment. ALLTEL Kentucky employs all reasonable measures to protect the confidentiality of the proprietary information in Complainant's Facilities Arrangements and to guard against inadvertent, unauthorized disclosure. Further, ALLTEL Kentucky is not entitled to publish such network sensitive information on behalf of Complainant.

4. K.R.S. §61.878(1)(c)(1) provides in pertinent part:

The following public records are excluded from the application of ...[the Open Records Act] and shall be subject to inspection only upon order of a court of competent jurisdiction ...

(c)1. ...records confidentially disclosed to an agency or required by an agency to disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

5. Public disclosure of Complainant's Facilities Arrangements would provide other entities an unfair advantage by affording them access to network proprietary information which was revealed to ALLTEL Kentucky's counsel only upon their

execution of a protective agreement. Such information contained in Complainant's Facilities Arrangements is generally considered confidential and proprietary in the telecommunications industry.

6. Complainant's Facilities Arrangements are also protected from disclosure pursuant to K.R.S. §61.878(1)(c)(2)(c) as confidential and proprietary records disclosed to the Commission in conjunction with the regulation of a commercial enterprise.

7. Filed with this Petition as Attachment 1 is one copy of the Brief that includes those portions of Complainant's Facilities Arrangements that are confidential. Also filed are ten copies of the Brief with Complainant's Facilities Arrangements information redacted.

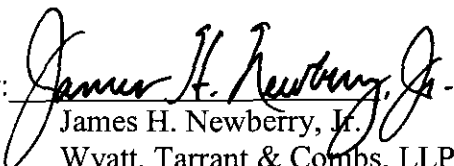
8. Due to the highly confidential nature of Complainant's Facilities Arrangements as set forth herein, any diskette containing an electronic form of the unredacted Complainant's Facilities Arrangements should not be duplicated under any circumstance and should be viewed only from the original diskette.

WHEREFORE, ALLTEL Kentucky respectfully requests that Complainant's Facilities Arrangements be accorded confidential treatment and be placed in the confidential files of the Commission, that viewing of any diskette containing the unredacted Complainant's Facilities Arrangements be restricted to only Commission and Staff involved herein, that no party herein including Staff be permitted to duplicate any diskette containing the unredacted Complainant's Facilities Arrangements, and that ALLTEL Kentucky be accorded all other relief to which it may be entitled.

Dated: December 12, 2003.

Respectfully submitted,

**ALLTEL KENTUCKY, INC.**

By: 

James H. Newberry, Jr.  
Wyatt, Tarrant & Combs, LLP  
Attorneys for Kentucky ALLTEL, Inc.  
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Lexington, KY 40507-1746  
Telephone: (859) 233-2012  
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**CERTIFICATE OF SERVICE**

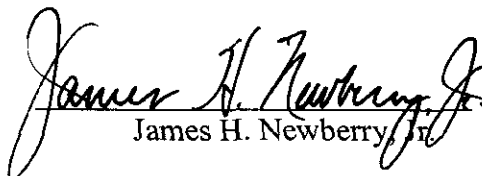
I hereby certify that copies of the Petition for Confidential Treatment and the attached Post Hearing Brief shown on pages 5 through 43 were served on the following by first class mail, postage prepaid:

Loretta A. Cecil  
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Dorothy J. Chambers  
General Counsel  
BellSouth Telecommunications, Inc.  
601 W. Chestnut St., Room 407  
Louisville, Kentucky 40202

This 12<sup>th</sup> day of December, 2003.

  
James H. Newberry, Jr.

**ALLTEL KENTUCKY, INC.**

**PETITION FOR CONFIDENTIAL TREATMENT**  
**ATTACHMENT 1**

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

<b>AT&amp;T BROADBAND PHONE OF</b>	)	
<b>KENTUCKY, LLC</b>	)	
<b>COMPLAINANT</b>	)	
	)	<b>CASE NO. 2003-00023</b>
<b>VS</b>	)	
	)	
<b>ALLTEL KENTUCKY, INC. AND</b>	)	
<b>KENTUCKY ALLTEL, INC.</b>	)	
<b>RESPONDENTS</b>	)	

**POST HEARING BRIEF OF  
ALLTEL KENTUCKY, INC. AND  
KENTUCKY ALLTEL, INC.**

Filed December 12, 2003

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On January 15, 2003, AT&T Broadband Phone of Kentucky, LLC ("AT&T Broadband" or "Complainant") filed its Complaint against ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") and Kentucky ALLTEL, Inc. ("Kentucky ALLTEL") (collectively referred to as "ALLTEL") regarding a number of issues. The parties met for an informal conference on March 25, 2003, during which BellSouth Telecommunications, Inc. ("BellSouth") was also represented. The parties resolved all but two issues prior to the hearing in this matter on June 12, 2003, before the Kentucky Public Service Commission ("Commission"). ALLTEL now files this Post Hearing Brief in support of its position with respect to the two remaining issues, which include (1) the manner of physical interconnection that will exist between ALLTEL Kentucky and Complainant and (2) resolution of the dual billing issue caused by Complainant's premature porting of numbers from Kentucky ALLTEL.

## **I. Introduction**

The remaining issues in this proceeding are twofold. First, the specific interconnection issue is whether ALLTEL Kentucky is required to extend its facilities or obtain use of facilities in order to establish a point of interconnection ("POI") with Complainant outside of the ALLTEL Kentucky network and outside of ALLTEL Kentucky's local exchange area (*i.e.*, at the BellSouth LATA tandem in Louisville). Complainant seeks this Louisville POI location because its switch is located there (outside of ALLTEL Kentucky's network). However, the traffic that Complainant desires to exchange at the POI with ALLTEL Kentucky is traffic that both originates and terminates within ALLTEL Kentucky's local exchange area. Complainant is, therefore, attempting to require ALLTEL Kentucky to establish a POI that is outside of ALLTEL

Kentucky's network and local calling area so that Complainant can then route that traffic back into and out of the ALLTEL Kentucky local calling area. The only reason this circuitous routing of local traffic is asserted by Complainant as being necessary is because Complainant's switch location is in Louisville rather than in ALLTEL Kentucky's local service area. Such a distorted result as demanded by Complainant is not provided for under the Telecommunications Act of 1996 ("the Act"), the Federal Communications Commission's rules ("FCC's Rules") promulgated thereunder, any cases applying or construing the Act or the FCC's Rules, or the Interconnection Agreement executed between Complainant and ALLTEL Kentucky in September 2002 ("the Interconnection Agreement").

Second, also at issue in this proceeding is the "dual billing issue," which involves Complainant and Kentucky ALLTEL (but not ALLTEL Kentucky). Very simply, the overlapping bills about which AT&T Broadband complains are actually caused by Complainant's premature porting of customer telephone numbers. The resolution of this issue is clearly within Complainant's control as it may simply not port prematurely or not bill until the firm order confirmation ("FOC") date. Complainant cited no authority, contract, or law that supports its desired result.

**II. The appropriate and lawful manner of physical interconnection between ALLTEL Kentucky and Complainant requires establishment of a POI that is on the ALLTEL Kentucky interconnected local network.**

ALLTEL Kentucky, BellSouth, and Complainant have existing facilities and networks located in the Commonwealth. Understanding of these networks is critical to determining the appropriate manner in which ALLTEL Kentucky and Complainant will interconnect. Exhibit 1 to ALLTEL's Direct Testimony is a diagram generally reflecting

the networks of Complainant, ALLTEL Kentucky, and BellSouth that are relevant to interconnection between Complainant and ALLTEL Kentucky. A copy of this diagram is also attached as Exhibit 1 to this Brief.

### **The Networks of ALLTEL Kentucky and BellSouth**

ALLTEL Kentucky is certificated to provide local exchange service in the Zoneton, Mt. Washington, and Shepherdsville exchanges. Its network is located entirely within these exchanges (i.e., the service territory where ALLTEL Kentucky is authorized by this Commission to provide local telephone service). ALLTEL Kentucky's network consists of loops to customer premises, switches to route calls to the called party. As an example, if someone in Zoneton calls someone else in Zoneton, a local ALLTEL Kentucky to ALLTEL Kentucky call, the call is routed entirely within ALLTEL Kentucky's Zoneton facilities. (ALLTEL Direct Testimony, page 3, line 24.)

ALLTEL Kentucky is not a toll provider, and thus, its network does not extend beyond its network or its territory. In fact, ALLTEL Kentucky's network does not extend to Louisville. Specifically, ALLTEL Kentucky's customers are provided toll service by interexchange carriers ("IXCs") such as BellSouth and AT&T. For example, ALLTEL Kentucky delivers toll calls from or to its Zoneton customers by meet point toll trunks that connect BellSouth's Louisville tandem switch (which is not in ALLTEL Kentucky's local service territory) to ALLTEL Kentucky's local Zoneton switch. ALLTEL Kentucky is only responsible for the facilities up to its POI with BellSouth, which POI is located at the intersection of the two incumbent local exchange carriers' ("ILECs") respective service territories. Likewise, BellSouth is responsible for the facilities in its Louisville territory on its side of the same POI. (ALLTEL Direct Testimony, page 4, line 4.)

Louisville, as acknowledged by Complainant's witness, David Sered, is in BellSouth's territory – not ALLTEL Kentucky's. (Transcript of Sered Examination, page 25, line 14.)

At one point during this proceeding, Complainant's witness asserted his belief that ALLTEL Kentucky's network and local calling area extend to the BellSouth tandem because of ALLTEL Kentucky's meet point billing arrangement with BellSouth. (Transcript of Sered Examination, page 31, line 2.) Complainant's witness admitted, however, that he had not seen the agreement between ALLTEL Kentucky and BellSouth that addresses the meet point billing arrangement, and thus he did not know whether ALLTEL Kentucky had any rights beyond its exchange boundary. (Transcript of Sered Examination, page 85, lines 16-24.) Complainant subsequently also agreed that the ALLTEL Kentucky – BellSouth meet point arrangement actually establishes the POI and **point of responsibility** at the point where the ILEC boundaries meet. (Transcript of Sered Examination, page 31, line 14.) Thus, Complainant and ALLTEL Kentucky are in agreement that ALLTEL Kentucky's local network and responsibility for network does not extend into BellSouth's Louisville service territory.

### **The Network of Complainant**

Complainant AT&T Broadband is one hundred percent owned and operated by Comcast Corporation ("Comcast") by virtue of Comcast's acquisition of Complainant AT&T Broadband's assets on November 18, 2002 (Transcript of Sered Examination, page 7, line 19.), although Complainant AT&T Broadband is the entity that is certificated by the Commission. (Transcript of Sered Examination, page 11, line 15.) Further, Complainant is a partner in network and customer of Insight Communications Company, Inc. ("Insight"), which is a cable company providing service in, among other areas,

ALLTEL Kentucky's exchanges. Complainant purchases use of network from Insight to connect Complainant's Louisville switch to the ALLTEL Kentucky Zoneton exchange and the last mile to a customer's home. (Transcript of Sered Examination, page 11, line 20.)

Complainant has "partnered" with and entered into various agreements with Insight that grant Complainant broad rights with respect to the network, and thus Complainant has "invested" in a local network within ALLTEL Kentucky's exchanges generally consisting of loops to customers. (See, AT&T Broadband's Complaint filed herein on January 15, 2003.) Yet, Complainant has not installed a switch in Zoneton and instead is presently using a switch that its predecessor chose to install in Louisville. (Transcript of Sered Examination, page 14, lines 10-16 and page 23, lines 12-15.) As noted previously, Louisville is in BellSouth's service territory and, therefore, is outside of ALLTEL Kentucky's service territory. (ALLTEL Direct Testimony, page 4, line 16. Transcript of Sered Examination, page 25, line 14.) It is unclear exactly how many access lines Complainant has in Kentucky (Transcript of Sered Examination, page 21, line 7), although Complainant's witness estimated that it currently has over 20,000 customers in Kentucky. (Transcript of Sered Examination, page 19, lines 20-22.)

As discussed in greater detail later, Complainant has also "partnered" with and entered into various agreements with Insight and has therefore "invested" in network to connect ALLTEL Kentucky's local Zoneton network to Complainant's Louisville switch by fiber optic cable that currently exists between Zoneton and Louisville. (Complaint at ¶¶26 and 28.)

With respect to the network described above, calls that originate with Complainant's customers in Zoneton (even calls of those customers living directly next door to the

parties they are calling) will be transported over Complainant's fiber to Louisville where Complainant's switch will determine where to direct the call based on the customer dialed number. If the call is to another one of Complainant's Zoneton customers, then the call will be routed back to Zoneton over the same fiber trunks from which it came to terminate on Complainant's called Zoneton customer. (ALLTEL Direct Testimony, page 4, line 18.) In order for Complainant's Zoneton customer to call an ALLTEL Kentucky Zoneton local customer, even if the customers are next door to each other, the call also must be routed to Complainant's Louisville switch over Complainant's same fiber to Louisville and then be returned by some network facility to Zoneton. (ALLTEL Direct Testimony, page 5, line 1.) Similarly, calls from an ALLTEL Kentucky Zoneton customer to one of Complainant's customers, even if the customers are again next door to each other, must also be routed by some means to Complainant's switch and then returned to Zoneton over Complainant's fiber to Zoneton.

In fact, Complainant established that originally, it maintained its switch in Cincinnati, Ohio and used that facility to switch its Louisville, Kentucky traffic. Complainant maintained this arrangement until such time as it had ample supply of customers in Louisville to justify installing a switch in Louisville. Delivery of Complainant's traffic from Ohio to Kentucky was covered pursuant to its partnership agreements. (Transcript of Rejba Examination, page 148, lines 6-16.) Significantly, applying Complainant's reasoning in the present case, if Complainant still in fact maintained its switch in Ohio, the parties would be addressing not only whether the POI should merely be established outside of ALLTEL Kentucky's network, but more precisely out of the state in which ALLTEL Kentucky is authorized to operate.

### **The Manner in Which These Networks Will Be Physically Interconnected**

**This case is not about whether Complainant will be provided interconnection.** To be clear, ALLTEL Kentucky is not denying Complainant the right to interconnect. This case is also not about ALLTEL Kentucky attempting to unilaterally dictate the exact location where the POI will be on ALLTEL Kentucky's network. Indeed, Complainant's witness agreed that ALLTEL Kentucky has not dictated a certain POI other than requiring Complainant to select a POI that is technically feasible and is located somewhere on ALLTEL Kentucky's network. (Transcript of Sered Examination, page 27, line 10.) Further, Complainant acknowledged that ALLTEL Kentucky also has not demanded that Complainant establish multiple POIs within the LATA. (Transcript of Sered Examination, page 38, line 12.) **To the contrary, ALLTEL Kentucky is offering to interconnect with Complainant at a single POI on ALLTEL Kentucky's network and to allow Complainant to exchange traffic with all of ALLTEL Kentucky's interconnected local network.** (See, Transcript of Sered Examination, page 27.)

Despite ALLTEL Kentucky's reasonable and lawful request that Complainant establish a POI on ALLTEL Kentucky's interconnected local network, Complainant has contended that it cannot successfully provide service in ALLTEL Kentucky's territory without establishing the POI at BellSouth's LATA tandem in Louisville and thus outside of ALLTEL Kentucky's network. Complainant's assertions in this regard are without merit and rebutted by its own testimony regarding its service to Lexington by way of its Louisville switch. Specifically, Complainant provides service to customers in Kentucky ALLTEL's Lexington service area and does so with interconnection and a POI exactly as ALLTEL Kentucky has offered in this case, on the ILEC network. In other words, Complainant's interconnection with Kentucky ALLTEL in Lexington is located on

Kentucky ALLTEL's network in Lexington. (Transcript of Sered Examination, page 15, lines 12-14 and page 77, lines 5-11). Complainant's successful service to Lexington refutes its own assertion that it could not economically provide service in Zoneton if it had to bear the transport cost to Louisville. In order to provision telephone service in Lexington, Complainant uses its Louisville switch and transports its traffic to and from its POI with Kentucky ALLTEL in Lexington. (Transcript of Sered Examination, page 16, line 10.) Thus, Complainant is successfully providing service to customers in Lexington, even though it is transporting traffic approximately eighty miles to and from Lexington to its switch in Louisville. (Transcript of Sered Examination, page 17, lines 14 - 20 and page 16, line 20.)

Without any logical basis for the statement, Complainant's witness contradicted his own testimony and stated that what is at issue is the definitional interpretation of what is the ALLTEL Kentucky network. (Transcript of Sered Examination, page 27, line 21 and page 38, line 25.) Clearly, Complainant raised this argument in an attempt to repair or fill in the missing element from its case. Interestingly, with this statement, Complainant acknowledges that in order to successfully argue that the single POI cases it cites support its position, then Complainant must be able to establish that ALLTEL Kentucky's network extends to Louisville as that is a critical element common to each of the cited cases and is required by the Act and the parties' Interconnection Agreement. The result is a failed attempt by Complainant to suggest that ALLTEL Kentucky's network does not end at ALLTEL Kentucky's ILEC service area but instead extends all the way to BellSouth's Louisville tandem by virtue of the ALLTEL Kentucky-BellSouth meet point billing arrangement. (Transcript of Sered Examination, page 68, lines 15-19 and page 80, lines 17-19.) However, Complainant provided no proof to support its fallacious



contention and even conceded that it had never even seen the meet point billing agreement between BellSouth and ALLTEL Kentucky. Complainant's witness then contradicted himself by admitting that ALLTEL Kentucky's network does not in fact extend beyond ALLTEL Kentucky's ILEC exchange boundary and thus does not include the Louisville service area. (Transcript of Sered Examination, page 25, line 14; page 27, line 25; page 31, line 20; page 84, lines 22-25.)

Complainant subsequently failed to re-establish its fallacious position through cross examination of ALLTEL Kentucky's witness, Lynn Hughes. Ms. Hughes, who has direct knowledge of the meet point arrangement between ALLTEL Kentucky and BellSouth, stated emphatically that ALLTEL Kentucky's network does not extend beyond its meet point with BellSouth at the exchange boundary and that ALLTEL does not own any of the network or have any responsibility for such beyond the meet point. (Transcript of Hughes Examination, page 204, lines 6-9.) Despite Complainant's acknowledgement that its Louisville switch location is outside of ALLTEL Kentucky's local network, it has continued to insist on establishing a POI at BellSouth's Louisville tandem such that the central dispute in this proceeding continues to be at whose expense will calls be transported to Complainant's distant switch location in order to then be rerouted back to the same area from which they originated.

Complainant or its predecessor placed its switch in Louisville and outside of ALLTEL Kentucky's service area. (ALLTEL Direct Testimony, page 5, line 7.) Had Complainant placed a switch in Zoneton or acceded to directly connect to the ALLTEL Kentucky local network in Zoneton, this issue would be moot. Instead, the issue remains in debate, becomes more significant the farther away Complainant decides to place its switch (e.g. Cincinnati, Ohio), and multiplies as other competitive local exchange carriers

(“CLECs”) with switches even farther away than Louisville attempt to opt into such an arrangement. (ALLTEL Direct Testimony, page 5, line 12.) Indeed, this is not a “Chicken Little” concern as Complainant itself asserted the following:

ALLTEL KENTUCKY COUNSEL: Okay. That’s fine. Do you intend to use this Louisville switch to connect to other independent telephone companies in Kentucky?

COMPLAINANT WITNESS: Those that we’re able to negotiate an ICA with, yes. (Transcript of Rejba Examination, page 135, lines 17-20).

ALLTEL KENTUCKY COUNSEL: Will you be attempting to do that? **Will you be asserting that the ’96 Act gives you the right and makes an obligation on them for those independents to bring traffic to you regardless of where your switch is located?**

COMPLAINANT WITNESS: **Yes.** (Transcript of Rejba Examination, page 136, lines 4-9.)

Obviously, other CLECs opting into the Interconnection Agreement would receive the same rights. As mentioned previously, if these CLECs have switches in other states, as did Complainant at one point, that they use to switch their Kentucky traffic, then ALLTEL Kentucky would be faced with the prospect of having to establish different POIs outside of its network and potentially outside of the very state in which it operates.

The present dispute is, however, easily avoided if Complainant allows ALLTEL Kentucky to exercise its contractual and legal rights to directly connect to the Complainant’s network in Zoneton. To the contrary, Complainant placed its switch in Louisville but refuses to accept responsibility for the costs of its network location and is trying to force costs on ALLTEL Kentucky. (ALLTEL Direct Testimony, page 5, line 11.) Despite Complainant’s allegations (but consistent with its apparent concessions during the hearing), ALLTEL Kentucky is not obligated under any applicable law or

agreement to deliver traffic outside of its local service area to a POI that is established on some distant network like BellSouth's tandem in Louisville

### **III. The Interconnection Agreement Does Not Support Complainant**

The Interconnection Agreement governing the parties' interconnection relationship does not support Complainant's theory that ALLTEL Kentucky should bear the financial responsibility for the location of Complainant's switch, and does not obligate ALLTEL Kentucky to establish a POI that is outside of ALLTEL Kentucky's network. Specifically, Section 2.0 of Attachment 4 of the Interconnection Agreement specifies two methods of interconnection that may be available, direct and indirect.

#### **Direct Interconnection**

In understanding any subsection of Attachment 4 to the Interconnection Agreement, it is necessary to read that subsection within the entire context of Attachment 4. In other words, it is essential to read the entire Attachment 4 because that Attachment begins with provisions that qualify or limit the remainder of the provisions. These initial qualifying provisions are discussed later in this section and the sections concerning indirect interconnection. Four variations of direct interconnection are described in Attachment 4.

First, 2.1.1 is available if Complainant chooses to install an end office or wire center within ALLTEL Kentucky's local exchange boundary where the direct interconnection is requested. (ALLTEL Direct Testimony, page 11, line 18.)

Second, Section 2.1.2, which clearly is available, describes jointly provisioned service arrangements allowing direct interconnection of the parties' networks "at a point other than the ALLTEL's and [Complainant's] end office or wire center." Thus, the

parties would jointly provision extensions of and connect their facilities. As described earlier, Complainant currently utilizes fiber and other facilities to connect its local Zoneton network to its switch, such that this manner of interconnection is technically feasible. Very significantly, Section 2.1.2 provides that “should the parties interconnect the jointly provisioned facilities, the Parties will mutually agree to an IP provided, however, **that the IP will be within ALLTEL’s exchange boundary where direct interconnection is requested.**” (ALLTEL Direct Testimony, page 11, line 23.) (Emphasis added.)

Third, Section 2.1.3 similarly addresses Mid-span Fiber Meet. (ALLTEL Direct Testimony, page 12, line 10.)

Fourth, Section 2.1.4 provides for interconnection whereby Complainant would establish a collocation in ALLTEL Kentucky's facilities. However, until Complainant establishes collocation, this form of direct interconnection is not relevant. (ALLTEL Direct Testimony, page 12, line 10.)

Complainant pays little or no attention to the direct interconnection provisions of the Interconnection Agreement and would have this Commission and ALLTEL Kentucky ignore them because it wants this proceeding to be solely about its rights and its desires. In reality, however, the remaining issue with respect to interconnection should also be about ALLTEL Kentucky’s rights under the Act and the Interconnection Agreement because the unresolved issue concerns interconnection with Complainant in order to deliver ALLTEL traffic to Complainant. Complainant’s right to interconnection to deliver its traffic appears to have been satisfied. Complainant apparently has an arrangement with BellSouth to use the BellSouth network for delivering its originated traffic to ALLTEL Kentucky. Complainant is delivering its Zoneton, Shepherdsville, and

Mount Washington originated traffic via its network to its Louisville switch, through BellSouth's Louisville tandem, through the BellSouth trunks connected to ALLTEL Kentucky, and ultimately back to Zoneton via the meet point with ALLTEL Kentucky. As indicated in and prior to the proceeding, ALLTEL Kentucky is agreeable to this manner of traffic delivery by Complainant as long as it does not overburden the current trunks, as long as BellSouth has agreed to such, provided that Complainant pays any transport associated with such circuitous traffic routing, and most importantly, as long as such does not then obligate ALLTEL Kentucky to deliver its originated traffic to a POI beyond its interconnected local network. (ALLTEL Direct Testimony, page 8, lines 2-8.)

The interconnection issue that remains in dispute concerns where the parties will interconnect for the purpose of ALLTEL Kentucky originated traffic to be terminated to Complainant's end users. Again, this is traffic that would originate with an ALLTEL Kentucky end-user located in ALLTEL Kentucky's existing local exchange area and terminate to Complainant's end-user that might be located simply across the street within the same ALLTEL Kentucky local exchange area.

Under the Act, ALLTEL Kentucky has the right to connect "directly or indirectly" to Complainant and can only be required to interconnect "on its network." (47 U.S.C. §§251(a) and (c)(3).) ALLTEL Kentucky is requesting direct interconnection to Complainant's network in the ALLTEL Kentucky exchange area as discussed below or, if Complainant prefers, connection to Complainant at ALLTEL Kentucky's meet point with BellSouth. In the latter case, Complainant would be responsible for any compensation for use of the BellSouth network, per its interconnection agreement with BellSouth.

Indeed, Complainant has an interconnection agreement with BellSouth with respect to those two parties' interconnected networks in the BellSouth Louisville service area. (Transcript of Sered Examination, page 51, lines 2-3.) Pursuant to the provisions of Complainant's interconnection agreement with BellSouth, Complainant acknowledges that it is required to compensate BellSouth for Complainant's originating traffic that transits BellSouth's Louisville tandem and for traffic that transits BellSouth's Louisville tandem for termination on Complainant's network. (Transcript of Sered Examination, page 53, lines 8-15.)

In addition to its rights under the Act, ALLTEL Kentucky has rights pursuant to the Interconnection Agreement. In accordance with the Interconnection Agreement, ALLTEL Kentucky "may" be able to use (if the parties can agree) one of the methods specified in the Interconnection Agreement if it is not in the ALLTEL Kentucky exchange area, but when within the ALLTEL Kentucky local exchange area, then those methods "will" be used. (ALLTEL Direct Testimony, page 10, lines 10-17.) The available means of interconnection include direct connection via jointly provisioned facilities or mid-span fiber meet. (*See*, Attachment 4 of the Interconnection Agreement.) Again, the parties have expressly agreed in the Interconnection Agreement that "[in] each ALLTEL Exchange Area where the Parties interconnect their networks," Complainant and ALLTEL Kentucky "will utilize" these methods. (ALLTEL Direct Testimony, page 10, line 17.)

Accordingly, pursuant to its rights under the Interconnection Agreement, ALLTEL Kentucky has requested to connect directly with Complainant's facilities in Zoneton, Mount Washington, or Shepherdsville. While Complainant attempts to deny ALLTEL Kentucky these rights and contends it does not own the facilities, Complainant has

“invested in facilities” in ALLTEL Kentucky exchanges. (Complaint at ¶26.) Further, Complainant described its investment in network as the “significant cost of facilities which it already has invested in Shepherdsville.” (Complaint at ¶28.)

Notwithstanding Complainant’s attempts on cross-examination to minimize the significance of its previous statements and to resist any implication that it owns or controls network in ALLTEL Kentucky’s exchange areas, Complainant’s facilities agreements with Insight tell a different story. During the hearing, ALLTEL Kentucky requested copies of agreements that might exist between Complainant and Insight with respect to its network “investment” in and to the ALLTEL Kentucky’s exchange areas. In response to ALLTEL Kentucky’s request and at the Commission’s direction, Complainant provided some of the agreements pursuant to a protective agreement. While Complainant refused to provide other relevant agreements including, but not limited to,

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Therefore, contrary to its effort at the hearing in this proceeding, Complainant cannot deny ALLTEL Kentucky direct interconnection to facilities located within ALLTEL Kentucky's exchange areas. ALLTEL Kentucky has such right pursuant to the Interconnection Agreement and §251(a) of the Act.

### **Indirect Interconnection**

Section 2.2 of Attachment 4 of the Interconnection Agreement provides for indirect network interconnection between the parties through a "third party tandem provider performing a transit function." Complainant once again has attempted to interpret this section wholly outside of its context in order to reach the illogical conclusion that ALLTEL Kentucky is required to connect with Complainant's Louisville switch utilizing the BellSouth tandem and to bear the associated costs. (ALLTEL Direct Testimony, page 12, line 15. Transcript of Hughes Examination, page 178, lines 23-24.)

Very simply, the Interconnection Agreement and common sense do not support Complainant's contentions. Complainant's distorted interpretation ignores the plain language of Attachment 4 of the Interconnection Agreement. Attachment 4 is entitled "Interconnection Architecture" and describes among other items certain means of interconnection methods. (ALLTEL Direct Testimony, page 10, line 1.) It provides alternatives that in some cases are relevant and others that are not, at least until other facts arise (e.g., collocation by Complainant or the presence of another carrier with a tandem switch situated such that a transit function is available).

As previously discussed, Section 1.1 of Attachment 4 of the Interconnection Agreement expressly indicates that it describes the arrangements that **may** be utilized by the parties for interconnection of their respective networks for the transmission and

routing of “Telephone Exchange Service and Exchange Access Service **pursuant to §251 of the Act.**” (Emphasis added.) Therefore, the initial sentence of Attachment 4 establishes the context within which the remaining sections of Attachment 4 must be interpreted. It further clarifies that the arrangements that are provided in Attachment 4 “may” be available (*i.e.*, were agreed to not be mandatory). Attachment 4 does not indicate that any one of the particular arrangements is mandated in all instances. (ALLTEL Direct Testimony, page 10, line 9.)

Mandatory availability, however, is provided in the second sentence of Section 1.1 of Attachment 4, which reads “**in each ALLTEL Exchange Area** where the Parties interconnect their networks, the Parties **will utilize** the interconnection method(s) specified below unless otherwise mutually agreed to in writing by the parties.” (Emphasis added.) Therefore, the plain reading of Attachment 4 demonstrates that the only time the interconnection methods (including indirect interconnection under Section 2.2 under which Complainant claims the right to indirect interconnection) are required to be available is **in each ALLTEL Kentucky exchange area** where the parties interconnect their networks. **Thus, Section 2.2 of Attachment 4 clearly provides that indirect interconnection is only relevant and mandatory where the interconnection is in the ALLTEL Kentucky service area.** (ALLTEL Direct Testimony, page 10, line 15.)

This interpretation is consistent with the Act which requires an ILEC to provide interconnection on its network and with Section 2.1 of the Interconnection Agreement which expressly requires it be consistent with the Act as interconnection is “pursuant to §251 of the Act.” Therefore, the Interconnection Agreement incorporates this “on the network” requirement expressly and by implication of §251.

Similarly, Section 1.3 of Attachment 4 refers to Exhibit A to Attachment 4. Exhibit A was intended to identify the interconnection method and POI for the exchange of traffic pursuant to the Interconnection Agreement. Notwithstanding the fact that Complainant and ALLTEL Kentucky have not yet developed and agreed upon an Exhibit A, such an Exhibit A was clearly intended by the express terms of the Interconnection Agreement to be mutually negotiated. Thus, Complainant's argument that Section 2.2 of Attachment 4 somehow mandates a POI at BellSouth's tandem or at Complainant's Louisville switch is simply incorrect and illogical. The parties always intended that the POI would be negotiated through Exhibit A. (ALLTEL Direct Testimony, page 10, line 25.)

Complainant's allegations are further dispelled by Section 1.4 of Attachment 4, which indicates that once Exhibit A is developed, it is to be based on the network configuration and capabilities existing as of the date of the agreement. Yet, it also provides that if factors change, then the parties will negotiate in good faith to modify. Again, this clear and unambiguous language of Section 2.2 does not mandate the result asserted by Complainant. Quite contrary to Complainant's assertions, it is clear that Attachment 4 was intended to specify interconnection arrangements that **may** be utilized by the parties and that were therefore not mandated. **To reiterate, the only mandatory language is that the parties' interconnection arrangement must be in ALLTEL Kentucky's exchange area.** (*See*, Interconnection Agreement. ALLTEL Direct Testimony, page 11, line 7.)

In summary, the Interconnection Agreement is not ambiguous. The various sections of the Interconnection Agreement (including Attachment 4) must be read in context and not extracted and subjected to some out-of-context non-sensical interpretation as Complainant has attempted to do. Clearly, Attachment 4 of the Interconnection

Agreement does not obligate either Complainant or ALLTEL Kentucky to provide a certain interconnection arrangement but does mandate that in the event of indirect interconnection, such an arrangement must be “within” ALLTEL Kentucky’s exchange area where the parties interconnect their networks. (ALLTEL Direct Testimony, page 12, line 19.) While ALLTEL Kentucky is not obligated to provide interconnection through a third party tandem outside its network or to bear any expense of transporting or switching that traffic through another entity’s network, ALLTEL Kentucky has indicated it would agree to such tandem interconnection for its originated traffic as long as the POI remains where it exists presently between ALLTEL Kentucky and BellSouth (i.e., at ALLTEL Kentucky’s exchange boundary and on ALLTEL Kentucky’s network). (ALLTEL Direct Testimony, page 13, line 3.)

In addition to the Interconnection Agreement supporting ALLTEL’s view, common sense also supports this view. To adopt Complainant’s position, one would have to conclude that ALLTEL agreed to transport traffic, at its expense, to anywhere of Complainant’s choosing, even, for example, to Cincinnati, Ohio, where Complainant formerly switched its Kentucky traffic.

### **The Act**

As set forth above, the Interconnection Agreement was negotiated pursuant to the Act and must be read in conjunction and interpreted consistently therewith. Further, Complainant (as a requesting CLEC) and ALLTEL Kentucky (as the ILEC) have obligations with respect to the Act and the Federal Communications Commission’s (“FCC”) rules based on the Act. (ALLTEL Direct Testimony, page 13, line 14.) With respect to these obligations, Complainant has accused ALLTEL Kentucky of claiming

that it (ALLTEL Kentucky) has a unilateral and arbitrary right to designate the exact location of the POI in ALLTEL Kentucky's local calling area. (Complainant Sered Direct Testimony, page 12, lines 12-22.) To be clear, ALLTEL Kentucky has not represented that these federal authorities grant to it the unilateral right to designate the exact location where the POI will be within ALLTEL Kentucky's local calling area or elsewhere. Quite the contrary, it is ALLTEL Kentucky who has correctly construed these federal authorities as allowing Complainant to select any POI, even a single POI, location with ALLTEL Kentucky, **as long as the POI is technically feasible and is somewhere, of Complainant's choosing, on ALLTEL Kentucky's local exchange network.** (§251(c)(2)(B) of the Act. 47 C.F.R. §51.305(a)(2). Transcript of Hughes Examination, page 200, lines 1-3.)

Complainant's case is predicated on its assertion that ALLTEL Kentucky is obligated to establish a POI outside of its network. The notion that ALLTEL Kentucky is so obligated is not consistent with the plain language of the Act or the FCC's rules. In particular, §251 of the Act and the FCC's rules provide as follows:

An incumbent LEC shall provide for the facilities and equipment of any requesting telecommunications carrier, interconnection **with the incumbent LEC's network ... (2) at any technically feasible point within the incumbent LEC's network....**" (47 C.F.R. §51.305(a)(2). § 251(c)(2)(B) of the Act.) (Emphasis added.)

In fact, Complainant's own witness confirmed his understanding that this section of the Act clearly states that ALLTEL Kentucky's duty as an ILEC is to interconnect with Complainant at any technically feasible point within ALLTEL Kentucky's ILEC network and that the FCC rules are consistent with this section of the Act. (Transcript of Sered Examination, page 25, line 3.) Complainant's witness further confirmed that Louisville is not within ALLTEL Kentucky's network. (Transcript of Sered Examination, page 25,

line 14.) Thus, as BellSouth's Louisville tandem is clearly not located within the ALLTEL Kentucky network, Complainant may not designate it as the POI.

These federal authorities are clear and unambiguous as is the Interconnection Agreement. While ALLTEL Kentucky is required and willing to connect with Complainant either directly or indirectly to exchange traffic, the parties have not, through the Interconnection Agreement or otherwise, agreed to act inconsistently with these federal authorities and require ALLTEL Kentucky to extend facilities beyond its local network or bear costs to accommodate Complainant's switch location, if Complainant chooses a POI which is outside ALLTEL Kentucky's local network.

#### **IV. Case Law Does Not Support Complainant's Position**

##### **Kentucky Public Service Commission Orders**

The Commission's Orders in Case Nos. 2000-404 ("the Level 3-BellSouth Order")<sup>1</sup> and 2001-404 ("the Brandenburg-Verizon Order")<sup>2</sup> are consistent with ALLTEL Kentucky's position. Ironically, Complainant cited these two orders as support for its assertion that ALLTEL Kentucky is obligated to establish a POI outside of its local network and service area (i.e., at the BellSouth LATA tandem in Louisville) even though Complainant admitted that the decisions in these cases all involved connections **on the**

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<sup>1</sup> In the Matter of the Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of Communications Act of 1934, As Amended by the Telecommunications Act of 1996; Case No. 2000-00404; Kentucky Public Service Commission Order dated March 14, 2001.

<sup>2</sup> In the Matter of Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South, Inc. Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, Case No. 2001-00224; Kentucky Public Service Commission Order dated November 15, 2001.



**ILECs' networks.** (Transcript of Sered Examination, page 86, lines 18-23.) Further, in discussing the two orders, Complainant also belatedly raised an entirely new claim that it is entitled to have the unilateral right to select one POI with ALLTEL Kentucky per LATA. (It should also be noted that Complainant's April 4, 2003 post-Complaint letter was the first time in its negotiation with ALLTEL Kentucky or in connection with its related Complaint that Complainant asserted this unilateral single POI per LATA right. The claim appears nowhere in the Complaint.) (*See*, Complaint.) However, this new assertion by Complainant does not change the outcome and does not support Complainant's demand for a POI at Louisville outside ALLTEL Kentucky's network, because ALLTEL Kentucky is not insisting on multiple POIs. ALLTEL Kentucky is willing to provide Complainant a single POI at any technically feasible point on ALLTEL Kentucky's network, and Complainant will thereby receive interconnection to all of ALLTEL Kentucky's three exchanges.

Complainant is clearly incorrect in its allegations with respect to the cases and orders it referenced. These decisions do not support Complainant.

### **The Level 3-BellSouth Order**

The Commission's decision in the Level 3-BellSouth Order was based on the fact that BellSouth owned a LATA tandem located in BellSouth's service territory, and that with this LATA tandem, BellSouth offered "local service in Kentucky which includes LATA-wide calling." Thus, in the Level 3-BellSouth case, the requested POI was "within the incumbent LEC's network," and BellSouth as the ILEC had a ubiquitous LATA-wide network that allowed it to voluntarily offer local service to include LATA-wide calling. It was on these facts that the Commission justified its decision to order BellSouth to

provide LATA-wide calling via the establishment of one POI within BellSouth's network.

Each of ALLTEL Kentucky's offers to Complainant in this case fully comply with the Level 3-BellSouth Order. ALLTEL Kentucky's entire network and calling area includes Zoneton, Mt. Washington, and Shepherdsville. With a single interconnection directly in Zoneton or at the meet point with BellSouth, Complainant will receive calling throughout the entire ALLTEL Kentucky calling area. The facts in the present case between Complainant and ALLTEL Kentucky vary, however, from those in the Level 3-BellSouth case. First, unlike BellSouth, ALLTEL Kentucky does not own a LATA tandem, at all, let alone within ALLTEL Kentucky's own service territory and on ALLTEL Kentucky's own network. Second, unlike BellSouth, ALLTEL Kentucky does not own a ubiquitous LATA-wide network. Third, unlike BellSouth, ALLTEL Kentucky does not offer LATA-wide calling as calling outside its network is possible only through an IXC. Fourth and finally, the requesting CLEC in the Level 3-BellSouth case did not demand that the ILEC establish a POI outside of the ILEC's local network, as Complainant is demanding here.

For all the foregoing reasons, the Level 3-BellSouth Order does not require that ALLTEL Kentucky meet Complainant's demand in this case for such an extra-network POI location.

### **The Brandenburg-Verizon Order**

The Brandenburg-Verizon Order adds nothing additional to the consideration or determination of these issues. It merely cites the Level 3-BellSouth Order as the basis for its decision to apply a single point per LATA. Again, the material facts giving rise to the

Brandenburg-Verizon Order again support ALLTEL Kentucky's willingness to provide a single POI per LATA on its network.

### **Other Regulatory Commission and Court Orders**

**In all of the state and FCC regulatory orders cited by Complainant, including the single POI per LATA cases, the POI is always located somewhere on the ILECs network, and the ILEC involved is always a Regional Bell Operating Company ("RBOC") or RBOC-like carrier which owns a ubiquitous LATA-wide network.** This is also the case with respect to all Court Orders cited by Complainant. The present case is materially different, in that Complainant is demanding a POI that would not be on ALLTEL Kentucky's local network. ALLTEL Kentucky does not own any LATA tandems, and ALLTEL Kentucky does not have a LATA-wide network. However, consistent with these decisions, ALLTEL Kentucky is offering single POI to its entire network just as the BOCs were required to provide, but this doesn't provide local access on a LATA-wide basis as ALLTEL's end users also do not receive such. Thus, ALLTEL Kentucky agrees it will deliver ALLTEL Kentucky originated traffic to a single POI, but the single POI has to be on ALLTEL Kentucky's network and not at BellSouth's tandem in Louisville.

### **Oregon Federal District Court Case<sup>3</sup>**

Even Complainant agreed that the court's decision in *U.S. West v. AT&T* (the "Oregon decision") actually supports the FCC's interpretation that a CLEC must select any POI **on the ILEC's network** and that the ILEC must assent to the location of the

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<sup>3</sup> *U.S. West v AT&T*, 31 F. Supp. 2d 839, 851-853 (D.C. Or., 1998).

POI on the ILEC's network so long as the POI is technically feasible. (Transcript of Sered Examination, page 41, line 11.) In addition, the Oregon decision stated as follows:

In determining how many points of interconnection are required, and the compensation payable to the ILEC, the PUC may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another. "[A] requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.<sup>4</sup>

#### **FCC's SBC Texas 271 Decision<sup>5</sup>**

Complainant further acknowledged that the SBC Texas 271 Decision supports the position that §251(c)(2) gives CLECs the right to deliver traffic terminating on the ILEC's network at any technically feasible point **in the ILEC's network**. (Transcript of Sered Examination, page 42, line 4.) In fact, Complainant and ALLTEL Kentucky agree that all of the decisions cited above, the Act, and the FCC's rules all contain similar provisions requiring the POI to be at the CLEC's discretion provided that the POI selected is technically feasible and is **on or within the ILEC's network**. (Transcript of Sered Examination, page 42, line 6.)

#### **FCC's Virginia Arbitration Decision<sup>6</sup>**

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<sup>4</sup> *Id.* at footnote 8, citing to the FCC's Local Competition Order at ¶199.

<sup>5</sup> Memorandum Report and Order, *Application of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Texas*, CC Docket No. 00-65 at ¶ 78 (June 30, 2000).

<sup>6</sup> *In the Matter of the Petition of WorldCom, Inc., et. al. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, FCC CC Docket Nos. 00-218, 00-249, 00251, July 17, 2002 at ¶52.

In this case, cited by Complainant's witness, David Sered, in his prefiled testimony at footnote 9, the FCC was actually acting in place of the Virginia State Corporation Commission in arbitrating this as a state matter and not an FCC matter. Even in this case (as well as those cases cited above by Complainant) in each instance in which a POI was approved by the FCC's arbitration order, it was located on the ILEC's network.

Interestingly, there are a number of other regulatory and court cases, some of which were decided after those cited by Complainant, to which Complaint did not cite.

#### **U.S. West Arizona Decision<sup>7</sup>**

In this decision the U.S. District Court held that a CLEC's demand for locating one or more POIs in such a way as to unfairly shift the cost of interconnection to the ILEC can be taken into account by the state commission in determining the location of the POIs, even to the extent of shifting the cost back to the CLEC. It did so by stating:

In determining whether a CLEC should establish more than one point of interconnection in Arizona, the ACC [state commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another.

As an alternative, the ACC may require a CLEC to compensate US West [the ILEC] for costs resulting from an inefficient interconnection. *See 47 U.S.C. § 252(d)(1); First Report and Order, P 199; Iowa Utilities, 120 F.3d at 810.* It would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants.

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<sup>7</sup> *U.S. West Communication, Inc. Consolidated Cases*, 46 F. Supp 2d 1004; 1020-1021 (USDC Arizona, 1999).

On appeal, this cost shifting principal was also upheld by the 9<sup>th</sup> Circuit which stated<sup>8</sup>:

However, to the extent that AT&T's [CLEC's] desired interconnection points prove more expensive to US West [ILEC], we agree that the ACC should consider shifting costs to AT&T. *See Bell-Atlantic Pa.*, 271 F.3d at 518 (citing 11 F.C.C.R. 15499 P 209 (1996)).

### **The Florida Public Service Commission Decision<sup>9</sup>**

Recently, the Florida Public Service Commission expressly held that the point of interconnection selected by the CLEC must be on the ILEC's network, by stating:

However, upon further review of the arguments submitted and the record in this proceeding, we clarify our statement at p. 25 of our [previous] Order such that the point of interconnection designated by the ALEC [i.e. CLEC], to which the originating carrier has the responsibility for delivering its traffic, *must be within the ILEC's network*. (Emphasis added.)

### **The FCC's Pennsylvania 271 Decision<sup>10</sup>**

The FCC expressly held that FCC rules were not violated by an ILEC requiring a CLEC to bear the cost of transport from an interconnection point (called an "IP" under Verizon's policy) to the POI.

If Complainant is contending that any of these cases provides it the right to a single POI per LATA and that POI is the required POI where all carriers must interconnect with it and deliver their traffic, then Complainant is attempting to rewrite the

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<sup>8</sup> *US West Communications, Inc. v. Jennings*, 304 F3rd 950, 961 (9<sup>th</sup> Cir., 2002).

<sup>9</sup> *In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*; Order Denying Motions for Reconsideration, (Docket No. 000075-TP, Order No. PSC-03-0059-FOF-TP, Issued: January 8, 2003), Page 23.

Act and case law under the Act. This, however, seems to be Complainant's view. (Transcript of Rejba Examination, page 136, lines 4-9.) No aspect of any decision cited by Complainant did or could stand for such a proposition. Interconnection is a right and obligation between the two negotiating carriers just as an arbitration is between only the carriers that are parties to that arbitration. When each of the cited arbitrations were conducted, only the negotiating carriers were parties. It is a basic premise of contract law that only the parties to the contract are bound by the contract. Similarly, it is a basic premise of arbitration that only the parties of the arbitration are bound by the decision. If, as Complainant argues, a POI, established by negotiation or arbitration between, for example, BellSouth and Complainant, is established between those carriers and all other carriers are then bound by that POI, then the non-party, in addition to violating other aspects of the Act and basic due process, has been denied any opportunity to negotiate or arbitrate that issue. This result directly violates the process that was established by the Act. Each new interconnection request initiates a new negotiation.

The POI is a material issue to be negotiated. The controlling guidance provided by the Act is that the POI with an ILEC must be technically feasible and on the ILEC's network. Without individual negotiation and arbitration, then requirements cannot be protected. Therefore, if Complainant is actually arguing that it is entitled to a single POI per LATA and that that single POI will be binding on all other carriers with which it desires to interconnect, Complainant is simply wrong. As discussed, all of the cases cited by Complainant that decided single POI per LATA cases merely decided that issue as between a CLEC and an RBOC that were parties to those proceedings, and again each of those POIs was on the network of the ILEC.

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<sup>10</sup> *Application of Verizon Pennsylvania Inc., et al. For Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd. 174919 (2001), para. 100.

**V. ALLTEL Kentucky is a Rural Telephone Company**

ALLTEL Kentucky is a “rural telephone company” within the meaning of §251(f)(1) of the Act in that it has far fewer than 100,000 subscribers in any one local study area. (47 U.S.C. §153(37).) Additionally, ALLTEL Kentucky is a “fewer than 2%” rural carrier within the meaning of §251(f)(2) of the Act in that ALLTEL Kentucky and all of its affiliate LECs in the aggregate nationwide only have approximately 2.9 million of the nation’s total 185.8 million subscriber lines, or approximately 1.56%. (47 U.S.C. §251(f). ALLTEL Direct Testimony, page 15, line 23 and page 16, line 4.) However, as established earlier, Complainant’s demand for a POI outside ALLTEL Kentucky’s network as part of its indirect interconnection claim or otherwise, is not anything allowed, contemplated, or required by the Act or the Interconnection Agreement. Therefore, rural exemptions and suspensions are not relevant to the actual claims asserted in the Complaint. If however, some yet unidentified construction of law is developed in this case to grant Complainant’s request and such survives the test of appeal, then ALLTEL Kentucky retains and has not waived its rural exemption or right to seek a 2% suspension or modification.

With respect to ALLTEL Kentucky’s rural exemption, Complainant bore the legal burden of proof in establishing that Complainant’s request would not be unduly economically burdensome to ALLTEL Kentucky. (*Iowa Utilities Board v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000).) While the FCC rules had been to the contrary, those were overturned by the Eighth Circuit. Complainant offered no proof whatsoever to justify the removal of the exemption. As Complainant had the burden and failed to carry that burden, the exemption remains effective.



ALLTEL Kentucky has also not waived any of its claims or defenses in this matter. The Interconnection Agreement disclaims any and all alleged waivers by course of conduct and any other waiver unless it is in writing and signed by both parties. In addition, Section 1.3 of the General Terms and Conditions of the Interconnection Agreement expressly states:

The Parties acknowledge and agree that by entering into and performing in accordance with this Agreement, the Parties have not waived or relinquished any applicable exemptions that are provided by or available under the [Telecommunications] Act [of 1996], including but not limited to those described in §251(f) of the Act, or under state law.

For example, since Complainant did not raise its “single POI per LATA” outside ALLTEL Kentucky’s network claim until after it filed its Complaint, ALLTEL Kentucky cannot be deemed to have waived any response thereto in its Answer timely filed on February 10, 2003. Moreover, since Complainant’s predecessor (AT&T of the South Central States, LLC) never asserted in its negotiations with ALLTEL Kentucky that the proposed interconnection agreement required a POI outside of ALLTEL Kentucky’s network, ALLTEL Kentucky would have had no occasion or need to raise its rural status in connection with said negotiations. Complainant “opted into” the Interconnection Agreement, and as the proper interpretation of the “indirect interconnection” clause does not require a POI outside of ALLTEL Kentucky’s network, ALLTEL Kentucky cannot be said to have waived any defenses with respect thereto.

**VI. Complainant’s premature porting of customer telephone numbers results in overlapping bills, and Complainant has the clear ability to resolve this issue, which is not supported by any authority, contract, or law**

Complainant has alleged that its customers are receiving overlapping bills in certain cases where Complainant ports a customer from Kentucky ALLTEL (in the Lexington area). This “dual billing” situation apparently has arisen when a Kentucky ALLTEL end user is being switched to Complainant's service. (ALLTEL Direct Testimony, page 2, line 19.)

By way of background, Complainant submits a local service request (“LSR”) to Kentucky ALLTEL and requests that the customer’s current number be made available by Kentucky ALLTEL for porting to Complainant. If the LSR is accurate and complete, Kentucky ALLTEL provides a firm order confirmation (“FOC”) to Complainant which confirms Kentucky ALLTEL’s acceptance of the due date requested by Complainant for the service charge. (ALLTEL Direct Testimony, page 2, lines 20-24.) In accepting the due date on the FOC, Kentucky ALLTEL is agreeing to enable the porting of the number as of the accepted due date. (ALLTEL Direct Testimony page 2, lines 24-25.) To be clear, the FOC is the date that is requested and selected by the CLEC (in this case, Complainant). (Transcript of Sered Examination, page 42, line 23.) **Further, Complainant admits that its interconnection agreement with Kentucky ALLTEL does not obligate Kentucky ALLTEL to activate the trigger for porting a number prior to the FOC date and that instead ALLTEL does so in an effort to accommodate Complainant's request.** (Transcript of Sered Examination, page 46, line 6.)

Kentucky ALLTEL is only required to enable the port as of the due date so that Complainant can cause the port to occur on the due date specified in the FOC. As acknowledged by Complainant, Kentucky ALLTEL service continues to remain available to the end user through the due date. (Transcript of Sered Examination, page 46, line 7.)

While Kentucky ALLTEL is not required to enable the porting of numbers prior to the FOC accepted due date, it has voluntarily done so to accommodate certain CLECs. Kentucky ALLTEL's obligation, however, is merely to meet the due date. This voluntary accommodation has not been added as an amendment and is not otherwise required by the parties' interconnection agreement. (ALLTEL Direct Testimony, page 3, lines 2-8.) In fact, Kentucky ALLTEL keeps its service available to the CLEC through the FOC date in the event that the CLEC needed to unport it to accommodate the customer prior to the close of the FOC date. (Transcript of Sered Examination, page 88, lines 2-11.) For ALLTEL to cease its billing as of any earlier port day that occurs prior to the FOC due date, ALLTEL would need to manually confirm when each port is accomplished by Complainant and would have to manually terminate its billing. These actions would impose additional and unnecessary costs on ALLTEL and its customers (ALLTEL Direct Testimony page 3, lines 16-19.)

If Complainant chooses to port the number prior to the due date set forth on the FOC, then it can and should avoid any billing issue by not billing for the period prior to the due date. (ALLTEL Direct Testimony page 3, line 8.) In Complainant's words, this dual billing problem could be avoided if Complainant did not start billing until the FOC date or if Complainant did not port the number until the FOC date. (Transcript of Sered Examination, pages 46-47, lines 19-4.) Alternatively, if Complainant desires to bill immediately upon porting the number, then it can avoid the overlapping bill situation by not porting the number prior to the due date. If Complainant does not chose to avoid rendering a bill that overlaps ALLTEL's billing by these means, but insists that ALLTEL change its practice, then ALLTEL will remedy the overlapping bill situation by

withdrawing its voluntary accommodation and not enabling the port prior to the FOC due date. (ALLTEL Direct Testimony page 3, lines 10-16.)

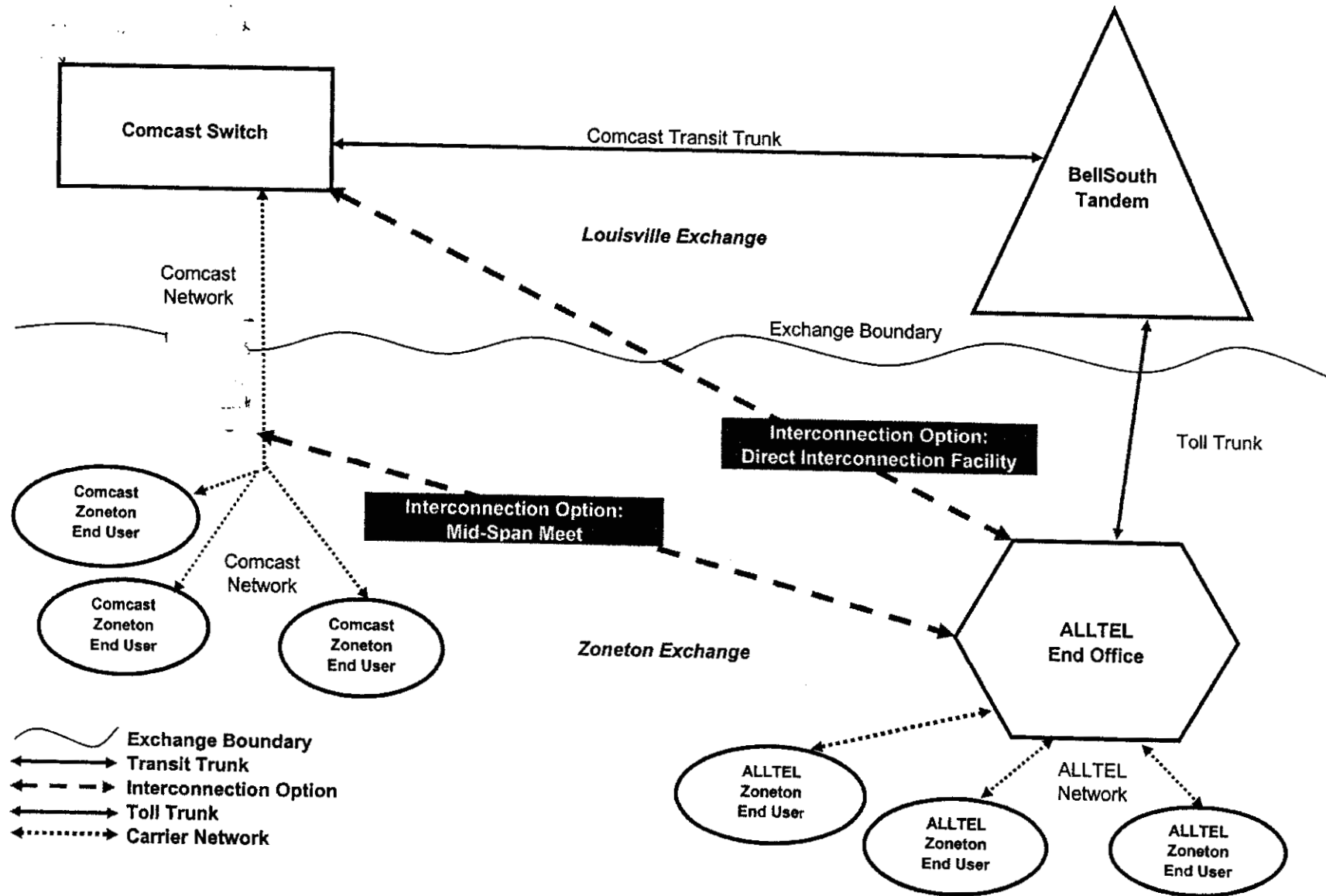
## **VII. Conclusion**

As both the Act and the Interconnection Agreement requires that any interconnection with ALLTEL Kentucky be on ALLTEL Kentucky's network, Complainant should be directed to either agree to a POI at the same location that ALLTEL Kentucky interconnects with BellSouth, *i.e.*, their meet point at their exchange boundary, or Complainant should provide direct connection with the ALLTEL exchange area. With respect to the dual billing issue, as Complainant has established no contractual or legal right for the relief it requests, and as it can totally avoid the problem by not prematurely porting numbers, its Complaint should be denied.

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**EXHIBIT 1 TO ALLTEL POST HEARING BRIEF**

Exhibit 1



**EXHIBIT 2 TO ALLTEL POST HEARING BRIEF**

**CONFIDENTIAL - REDACTED IN ITS ENTIRETY**

**EXHIBIT 3 TO ALLTEL POST HEARING BRIEF**

**CONFIDENTIAL - REDACTED IN ITS ENTIRETY**



**EXHIBIT 4 TO ALLTEL POST HEARING BRIEF**

**CONFIDENTIAL - REDACTED IN ITS ENTIRETY**